IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 14.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.5914 of 2018
and
W.M.P.Nos.7284 to 7286 of 2018

R.Murugan ...Petitioner

Vs

1.The Government of Tamil Nadu,
Rep by its Secretary,
Commercial Taxes and Registration Department,
Secretariat, Chennai.

2.The Additional Chief Secretary,
Commissioner of Commercial Taxes,
Ezhilagam, II Floor, Chepauk,
Chennai-600 005. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to impugned order of the second respondent bearing Charge Memo No.CD2/13775/2016, dated 14.12.2017 and quash the same.

For Petitioner : Mr.Haja Nazirudeen, Senior Counsel
for Mr.R.Ramesh

For Respondents: Mr.K.V.Sajeev Kumar,
Government Counsel

ORDER

By consent of both the parties, this writ petition is taken up for final disposal.

2. The petitioner herein, while serving as an Assistant Commissioner of Commercial Tax between the period 11.08.2010 and 31.08.2014, has been leveled with certain charges through the charge memo dated 14.12.2017, which has been put under challenge in this writ petition.

3. The only ground raised by the petitioner is that the charges relate to certain dereliction of duties for the period commencing from 2010 onwards and in view of the delay in framing the charges, serious prejudice has been caused to the petitioner and therefore, the charge memo requires to be quashed. Pursuant

to the charge memo, the petitioner has given his explanation on 14.02.2018.

4. It is no doubt true that this Court, as well as the Hon'ble Supreme Court in various decisions, have held that the inordinate delay in framing the charges, which has not been explained satisfactorily, would cause serious prejudice to the petitioner and therefore, the disciplinary action as against these charges cannot be permitted to continue. The learned Single Judge of this Court in the case of Kootha Pillai Vs. The Commissioner, Municipal Administration and others in W.P.No.15231 of 2006 had extensively dealt with various decisions of the Hon'ble Supreme Court as well as the Division Benches of this Court and upheld such a ratio.

5. The learned Senior Counsel appearing for the petitioner would submit that the incident for which the dereliction had been pointed out pertains to 2010, whereas, the charges were framed only in the year 2017 and therefore, the delay is inordinate.

6. Per contra, the learned Government Pleader placed reliance on the averments made in the counter affidavit and submitted that the delay was due to the investigation carried out by the proper investigating authority, pursuant to which, the decision to initiate the departmental proceedings was recommended to the Government and therefore had occurred some delay. It is also his submission that the charges relate to huge revenue loss by the petitioner and therefore, the same requires to be established during the course of enquiry.

7. What requires to be determined in this case is as to whether, the delay in framing the charges in the year 2017, which pertains to the incidents which occurred between 2010 and 2014, has been construed to be an inordinate delay. In all the decisions referred to in the case of Kootha Pillai (supra), the delay referred to therein has been inordinate. Since the reason for the delay was not explained satisfactorily, a mere delay in framing the charges may not be a ground to invoke the extraordinary powers of this Court under Article 226 of the Constitution of India, but such a delay should be inordinate in nature. When a satisfactory reason is assigned for the delay, it would not be appropriate to quash the charge memo on the ground of delay. Moreover, the Hon'ble Supreme Court as well as this Court, in various decisions, have restricted the powers of the High Court in interfering with the disciplinary action at the stage of issuance of charge memo. In the instant case, since the respondents have assigned certain reasons with regard to the delay by citing the investigation by the authorities and the dereliction of the duties by the petitioner, the subsequent

recommendation made to the Government for investigation proceedings against the petitioner and the consequent approval granted by the government for proceeding against the petitioner, seems to be a plausible reason for the delay. Hence, the delay, as alleged by the petitioner, cannot be inordinate in nature.

8. Though the petitioner herein had raised several other grounds touching upon the facts of the case, it is appropriate that such facts requires to be established before the enquiry officer alone. Any remarks made by this Court on such factual grounds may have a bearing on the departmental enquiry. Therefore, this Court consciously refrains from addressing these factual grounds raised by the petitioner.

9. In the light of the above observations, the grounds raised by the petitioner does not deserve consideration. Accordingly, the writ petition stands dismissed. However, by taking into account that the petitioner was 53 years when the impugned charge memo was framed and he is at the verge of retirement, the disciplinary authority is called upon to expedite the departmental action against the petitioner and complete the same atleast within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

sbn
To
1.The Secretary,
The Government of Tamil Nadu,
Commercial Taxes and Registration Department,
Secretariat, Chennai.

2.The Additional Chief Secretary,
Commissioner of Commercial Taxes,
Ezhilagam, II Floor, Chepauk,
Chennai-600 005

+1 CC to Mr.R.Ramesh, Advocate sr 33378
+1 CC to The Special Government Pleader sr 34067.

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and
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NRL(CO)
SP(18/08/2021)